

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Amerimax Building Products, Inc.,	§	
	§	
Plaintiff,	§	Case No. 4:09-cv-00154-RAS
v.	§	
	§	
Crane Co.,	§	
Crane Composites, Inc., and	§	
Noble Composites, Inc.	§	
	§	
Defendants.		

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT
PURSUANT TO PATENT L.R. 4-3

Pursuant to P.R. 4-3, Plaintiff Amerimax Building Products, Inc. and Defendants Crane Co., et al., jointly file this Joint Claim Construction and Prehearing Statement, and state as follows:

I. AGREED CLAIM CONSTRUCTIONS [P.R. 4-3(a)]

The parties have not agreed pursuant to P.R. 4-3(a) to any constructions of claim terms, phrases, or clauses contained in the Patent-in-Suit, U.S. Patent No. 6,755,633 B2.

II. DISPUTED CLAIM CONSTRUCTIONS [P.R. 4-3(b)]

Pursuant to P.R. 4-3(b), the parties propose the following constructions for each disputed claim term, phrase or clause contained in the Patent-in-Suit, U.S. Patent No. 6,755,633 B2, and make the following identifications of intrinsic and extrinsic evidence in support of their respective constructions. Each party reserves the right to rely upon evidence identified by the other party.

A. guide mechanism/guide mechanism for guiding the molds (Claims 1, 8, 16, 20, 32)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
<p>guide mechanism / guide mechanism for guiding the molds:</p> <p><i>Plaintiff asserts this term is governed by 35 U.S.C. § 112(6).</i></p> <p><i>Construction under 35 U.S.C. § 112(6):</i></p> <p><i>Function: guiding the molds through said spraying apparatus and applicator mechanism</i></p> <p><i>Structure: a plurality of guide rollers</i></p> <p><i>To the extent the Court determines this term is not so governed, Plaintiff proposes this term to be construed as follows:</i></p> <p><i>a mechanism, separate and apart from the drive mechanism, for guiding the molds through said spraying apparatus and applicator mechanism</i></p>	<p>guide mechanism: <i>a mechanism that regulates or directs motion or action</i></p> <p>guide mechanism for guiding the molds: <i>a mechanism that regulates or directs motion or action of the molds</i></p>
<p><u>Intrinsic Evidence:</u></p> <p>The claims of the '633 Patent.</p> <p>'633 Patent, Figs 2A-2E and 3.</p> <p>"a guide mechanism for guiding the molds through the spraying apparatus and applicator mechanism" Col 1, ll. 61-63; col 2., ll. 51-54.</p> <p>"The guide mechanism is comprised of a plurality of guide rollers. The guide rollers comprise a first plurality of rollers, each having a rotational axis along a horizontal axis, to guide the molds in a horizontal sense." Col 2., ll. 10-13.; col 3, ll. 11-17</p> <p>"The guide rollers further comprise a second plurality of rollers, each having a</p>	<p><u>Intrinsic Evidence:</u></p> <p>Fig. 3; col. 5, lines 42-65</p>

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
<p>rotational axis along a vertical axis, to guide the molds in a lateral sense." Col 2., ll. 18-21; col 3, ll. 11-17</p> <p>"Preferably, the spraying apparatus flanks the guide mechanism, whereby the molds are driven relative to, and through, the spraying apparatus, and has an enclosure surrounding the spraying apparatus." Col 2., ll. 37-41.</p>	
<p><u>Extrinsic Evidence Offered:</u></p> <p>Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.</p>	<p><u>Extrinsic Evidence Offered:</u></p> <p><i>Webster's</i>¹, p. 849 "guide": ...11. a device that regulates or directs progressive motion or action.</p> <p><i>Webster's</i>, p. 1193 "mechanism": ..3. machinery or mechanical appliances in general</p>

B. drive mechanism/drive mechanism for independently driving individual ones of said plurality of molds (Claims 1, 2, 15, 26, 37)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
<p>drive mechanism / drive mechanism for independently driving individual ones of said plurality of molds:</p> <p><i>Plaintiff asserts this term is governed by 35 U.S.C. § 112(6).</i></p> <p>Construction under 35 U.S.C. § 112(6):</p> <p>Function: independently driving individual ones of said plurality of molds</p> <p>Structure: a plurality of drive rollers</p> <p><i>To the extent the Court determines this term is not so governed, Plaintiff proposes this term to construed as follows:</i></p>	<p>drive mechanism: <i>a mechanism that causes movement</i></p> <p>drive mechanism for independently driving individual ones of said plurality of molds: <i>a mechanism that causes movement of individual molds</i></p>

¹ *Webster's New Universal Unabridged Dictionary* (Barnes & Noble 1996).

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
<p><i>a mechanism, separate and apart from the guide mechanism, for driving individual molds</i></p>	
<p><u>Intrinsic Evidence:</u></p> <p>The claims of the '633 Patent.</p> <p>'633 Patent, Figs 2A-2E and 3.</p> <p>“drive mechanism for independently driving individual ones of said plurality of molds” Col 1, ll. 63-65.</p> <p>“The drive mechanism is comprised of drive rollers positioned beneath the central I-beam, drivingly engaging the drive surface.” Col 2, ll. 34-36; col. 3, ll. 29-32.</p> <p>“Preferably, the apparatus further comprises a drive mechanism composed of a polarity of drive rollers, to propel individual molds through the enclosure.” Col 2, ln. 66 – col. 3, ln. 1.</p> <p>“The drive rollers are driven by variable speed motors which are individually controllable.” Col. 3, ll. 8-10.</p> <p>“the drive mechanisms 90 can move the mold 46 into the front enclosure section 120.” Col 7, ll. 37-39.</p>	<p><u>Intrinsic Evidence:</u></p> <p>Col. 3, lines 45-47</p> <p>Fig. 3; col. 5, line 66 – col. 6, line 14</p> <p>Figs., 2A-2E; col. 7, lines 36-39</p>
<p><u>Extrinsic Evidence:</u></p> <p>Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.</p>	<p><u>Extrinsic Evidence:</u></p> <p><i>Webster's</i>, pp. 597-598 “drive”: ...1. to send, expel, or otherwise cause to move by force or compulsion...33. <i>Mach.</i> a driving mechanism...</p> <p><i>Webster's</i>, p. 1193 “mechanism”: ...3. machinery or mechanical appliances in general</p>

C. individually controllable (Claims 7, 31)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
individually controllable: <i>capable of being regulated or directed separately from others</i>	individually controllable: <i>capable of being controlled separately from others</i>
<p><u>Intrinsic Evidence:</u></p> <p>“As described above, each individual motor 92 is operated by a switch 102. Thus if a mold is completed for example at station 26, but a problem exists in spray station 14, those individual motors may be stopped completely, or possibly slowed down.” Col. 8, ll. 54-58.</p>	<p><u>Intrinsic Evidence:</u></p> <p>Fig. 1; col. 8, lines 51-65</p> <p>Fig. 3; col. 6, lines 6-9</p>
<p><u>Extrinsic Evidence:</u></p> <p>Random House Webster's College Dictionary 672 (1st ed. 2001) defines “individually” as:</p> <p>“1. one at a time; separately.”</p> <p>Random House Webster's College Dictionary 291 (1st ed. 2001) defines “control” as:</p> <p>“1. to exercise restraint or direction over, dominate, regulate, or command. . .</p> <p>11. a device for regulating, guiding, or directing, the operation of a machine, apparatus, or vehicle.”</p> <p>Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.</p>	<p><u>Extrinsic Evidence:</u></p> <p><i>Webster's</i>, p. 974</p> <p>“individually”: 1. one at a time; separately.</p>

D. ventilation system (Claims 18, 21)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
ventilation system: <i>A system for extracting and removing fumes without exhausting fumes into the plant environment</i>	ventilation system: <i>equipment for providing ventilation</i>
<p><u>Intrinsic Evidence:</u></p> <p>The claims of the '633 Patent.</p> <p>'633 Patent, Figs 8,10,12.</p> <p>"Enclosure further includes a ventilation system to vent fumes within the enclosure." Col. 2, ll. 41-42.</p> <p>"The viewing station 18 can further include a duct section 198 with a vent stack 200 to ventilate the system at the operator's viewing station such that opening the hinged glass section 186 does not exhaust fumes into the plant environment." Col. 6, ll. 45-49.</p> <p>"Finally, with respect to the ventilation, it is anticipated that the entire line, including the front enclosure section 120, spray station 14, curing oven 16, and finally, rear enclosure section 246, are totally enclosed, such that all active vapors, such as from the gel coating and the resins, may be ventilated through one or more ventilation stacks, such as 200." Col 9, ll. 5-10.</p>	<p><u>Intrinsic Evidence:</u></p> <p>Col. 2, lines 40-41 and 54-64</p> <p>Figs. 8-10; col. 6, lines 45-49</p> <p>Fig. 11; col. 6, line 66 – col. 7, line 10</p> <p>Col. 9, lines 5-10</p>
<p><u>Extrinsic Evidence:</u></p> <p>Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.</p>	<p><u>Extrinsic Evidence:</u></p> <p><i>Webster's</i>, p. 2112</p> <p>"ventilate": .1. to provide...with fresh air in place of air that has been used or contaminated.</p> <p>"ventilation": ...3... facilities or equipment for providing ventilation</p>

E. flanks (Claim 16) / flank (claim 35)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
flank (Claim 35): <i>are situated parallel to both sides of</i>	flank: <i>are/is positioned at the side of</i>
flanks (Claim 16): <i>is situated parallel to</i>	flanks: <i>are/is positioned at the side of</i>
<u>Intrinsic Evidence:</u> The claims of the '633 Patent. '633 Patent, Figs 1, 2A-E, 4, 6 and 7. "Preferably, the spraying apparatus flanks the guide mechanism, whereby the molds are driven relative to, and through, the spraying apparatus, and has an enclosure the spraying apparatus." Col. 2, ll. 37-40.	<u>Intrinsic Evidence:</u> Col. 2, lines 37-40 Col.3, lines 18-26
<u>Extrinsic Evidence:</u> Merriam-Webster's Collegiate Dictionary 442 (10th ed. 2002) defines "flank" as: "3a: to be situated at the side of; to be situated on both sides of" b. to place something on each side of" Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.	<u>Extrinsic Evidence:</u> <i>Webster's</i> , p. 729 "flank": 13. to occupy a position at the flank or side

F. horizontally projecting, longitudinally extending drive surface (Claim 3)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
horizontally projecting, longitudinally extending drive surface: <i>Plain and ordinary meaning</i>	horizontally projecting, longitudinally extending drive surface: <i>a surface that projects in any direction in a plane parallel to the ground and that extends along the length of a path</i>
<u>Intrinsic Evidence:</u> The claims of the '633 Patent.	<u>Intrinsic Evidence:</u> Col. 3, lines 48-59

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
	Figs. 2A-E & 3; col. 5, lines 34-41 Figs. 2A-E & 3; col. 6, lines 9-14
<u>Extrinsic Evidence:</u> Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.	<u>Extrinsic Evidence:</u> <i>Webster's</i> , p. 921 “horizontal”: 1... parallel to level ground. <i>Webster's</i> , p. 1133 “longitudinal”: ..2. extending in the direction of the length of a thing; running lengthwise

G. a first plurality of rollers . . . to guide said molds in a horizontal sense (Claim 9)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
a first plurality of rollers ... to guide said molds in a horizontal sense: <i>Plain and ordinary meaning</i>	a first plurality of rollers ... to guide said molds in a horizontal sense: <i>rollers that guide the molds in any direction in a plane parallel to the ground</i>
<u>Intrinsic Evidence:</u> The claims of the '633 Patent.	<u>Intrinsic Evidence:</u> Figs. 2A-E & 3; col. 5, lines 42-65
<u>Extrinsic Evidence:</u> Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.	<u>Extrinsic Evidence:</u> <i>Webster's</i> , p. 849 “guide”: ...11. a device that regulates or directs progressive motion or action. <i>Webster's</i> , p. 921 “horizontal”: 1... parallel to level ground.

H. a second plurality of rollers . . . to guide said molds in a lateral sense (Claim 11)

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
a second plurality of rollers ... to guide said molds in a lateral sense: <i>Plain and ordinary meaning</i>	a second plurality of rollers ... to guide said molds in a lateral sense: <i>rollers that guide the molds with respect to a sideways direction</i>
<u>Intrinsic Evidence:</u> The claims of the '633 Patent.	<u>Intrinsic Evidence:</u> Figs. 2A-E & 3; col. 5, lines 42-65

PLAINTIFF'S CONSTRUCTION	DEFENDANTS' CONSTRUCTION
<p><u>Extrinsic Evidence:</u></p> <p>Amerimax reserves the right to rely upon expert testimony to counter any expert testimony proffered by Defendants with regard to this claim limitation.</p>	<p><u>Extrinsic Evidence:</u></p> <p><i>Webster's</i>, p. 1086 “lateral”: ...1... situated at, proceeding from, or directed to a side.</p>

III. LENGTH OF CLAIM CONSTRUCTION HEARING [P.R. 4-3(c)]

The parties anticipate that the claim construction hearing will require a total of four hours.

IV. LIVE WITNESS TESTIMONY AT CLAIM CONSTRUCTION HEARING [P.R. 4-3(d)]

The parties do not intend to call witnesses live at the claim construction hearing. The parties reserve the right to use an expert witness for tutorial purposes if it would be of assistance to the Court.

V. OTHER ISSUES [P.R. 4-3(e)]

According to the Scheduling Order (Docket Entry 23), there is no prehearing conference scheduled before the claim construction hearing. The parties do not at this time have any other issues that might be appropriately taken up at either a prehearing conference before or at the claim construction hearing. Should any party become aware of such issues that it believes necessitates a prehearing conference, it will notify the other party and the Court and propose dates for a prehearing conference.

Dated: May 3, 2010

Respectfully submitted,

/s/ Jason W. Cook (with permission)

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served on all counsel of record via CM/ECF, on the 3rd day of May, 2010.

/s/ Kelly P. Chen

Kelly P. Chen